

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0022

Sales & Use Tax

For the Calendar Years 1999, 2000, & 2001

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the negligence penalty.

II. **Tax Administration** - Interest

Authority: IC 6-8.1-10-1

The taxpayer protests the interest assessment.

STATEMENT OF FACTS

The negligence penalty and interest were assessed on a Department audit conducted for the calendar years 1999, 2000, and 2001.

The taxpayer is a bank located in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the taxpayer's employees were unaware of the requirement to pay use tax on the items listed in the audit report.

The Department points out the items were taxed in a previous audit.

The regulation which provides the guideline for penalty is as follows:

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was ignorant of tax duties. Ignorance is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

II. Tax Administration – Interest

DISCUSSION

The taxpayer argues the interest assessment should be adjusted to accrue through the period ending June 2002 instead of the period ending December 2002. The reason for this is because the audit was completed in March 2002 and the taxpayer did not get the assessment until November 2002. This prevented the taxpayer from paying the assessed tax until November 2002 which caused the taxpayer to be assessed additional interest.

The Department points out the audit was completed June 11, 2002 and the assessment was mailed October 29, 2002. The Department considers the assessment mailing timely. Furthermore, interest can not be waived according to statute. IC 6-8.1-10-1.

FINDING

The taxpayer's interest protest is denied.